

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 08-J-10456-RAP
)	09-O-11418 (Cons.)
DAVID M. VAN SICKLE,)	
)	DECISION AND ORDER SEALING
Member No. 167401,)	CERTAIN DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this consolidated disciplinary proceeding, respondent David M. Van Sickle (respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation for two years subject to certain conditions, including a nine-month period of suspension.

Pertinent Procedural History

On November 21, 2008, the State Bar of California's Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case no. 08-J-

¹ Unless otherwise indicated, all references to rules refer to the California Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

10456. On December 16, 2008, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issue.

Respondent sought to participate in the State Bar Court's ADP. On February 2, 2009, this matter was referred to the ADP. On March 5, 2009, respondent signed a LAP Participation Plan.

On April 23, 2009, the State Bar filed a second NDC against respondent in case no. 09-O-11418. This matter was consolidated with case no. 08-J-10456 on April 30, 2009.

On June 15, 2009, respondent submitted a declaration to the court, establishing a nexus between his mental health issues and the charges in case nos. 08-J-10456 and 09-O-11418.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on December 16, 2009. The Stipulation set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances involved in case nos. 08-J-10456 and 09-O-11418.

On February 9, 2010, the court issued an order enrolling respondent as an inactive member of the State Bar pursuant to section 6233. This order was effective March 15, 2010.

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated April 5, 2010, formally advising the parties of: (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP, and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP, the court accepted respondent for participation in the ADP, and respondent's period of participation in the ADP began on April 5, 2010.

On April 5, 2010, the court lodged the Confidential Statement of Alternative Dispositions and Orders and the Contract and Waiver for Participation in the State Bar Court's ADP. That same day, the court filed the Stipulation and its accompanying order.

On December 7, 2010, respondent filed a motion to terminate his inactive enrollment and return to active status. On December 16, 2010, the State Bar filed its opposition. On December 22, 2010, the court ordered that respondent's inactive enrollment under Business and Professions Code section 6233 be terminated that same day.

Respondent participated successfully in the State Bar Court's ADP. On September 28, 2011, the court issued an order finding that respondent has successfully completed the ADP.

Findings of Fact and Conclusions of Law

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. In case no. 08-J-10456, respondent stipulated that the factual findings and final disciplinary order of the Minnesota Supreme Court constitute conclusive evidence that respondent is culpable of violating the following California statutes or rules:

- Rule 3-110(A) [failure to perform legal services with competence];
- Rule 4-100(B)(4) [failure to promptly pay client funds];
- Rule 4-100(A) [commingling funds in trust];
- Rule 4-100(A) [failure to maintain client funds in trust];
- Rule 4-100(B)(3) [failure to maintain proper accounts];
- Section 6106 [moral turpitude—NSF checks]; and
- Section 6106 [moral turpitude—misrepresentation to a judge].²

² This misconduct also constituted a violation of section 6068, subdivision (d) [seeking to mislead a judge].

In case no. 09-O-11418, respondent stipulated to four counts of failing to comply with the conditions attached to his disciplinary probation in California Supreme Court case no. S147609 (State Bar Court case no. 99-O-12923), in willful violation of section 6068, subdivision (k).

In aggravation, respondent, as referenced above, had one prior record of discipline. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std. 1.2(b)(i).)³ Effective February 23, 2007, in Supreme Court case no. S147609, respondent was suspended from the practice of law for one year, stayed, with two years' probation and three months' actual suspension, for violating rules 3-300 [acquiring interest adverse to client] and 4-200(A) [illegal or unconscionable fee].

Additional aggravation included respondent's multiple acts of wrongdoing (std. 1.2(b)(ii)), and the significant harm he caused his client and the administration of justice (std. 1.2(b)(iv)).

In mitigation, respondent cooperated with the State Bar (std. 1.2(e)(v)), and his misconduct involving his client trust account was magnified by bank errors. Respondent also demonstrated good character through a wide range of witness declarations (Std. 1.2(e)(vi)), and provided volunteer and pro bono services. In addition, respondent was suffering from severe emotional, financial, and family problems at the time of the misconduct. (Std. 1.2(e)(iv).)

The court also acknowledges respondent's participation in the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program - Mental Health, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to his misconduct. Accordingly, it is appropriate to consider

³ All further references to standard(s) or std. are to this source.

respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.2(b), 2.3, 2.4(b), and *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389; *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357; and *Waysman v. State Bar* (1986) 41 Cal.3d 452.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below, contained in the Confidential Statement of Alternative Dispositions and Orders.

Recommended Discipline

It is hereby recommended that respondent **David M. Van Sickle**, State Bar Number 167401, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation⁴ for a period of two years subject to the following conditions:

⁴ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

1. Respondent David M. Van Sickle is suspended from the practice of law for nine months (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on March 15, 2010, and ended on December 22, 2010).
2. Respondent David M. Van Sickle must also comply with the following additional conditions of probation:
 - a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - b. Within ten days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
 - c. Within thirty days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
 - d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty days before the last day of the period of probation and no later than the last day of the probation period;
 - e. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;

- f. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP; and
- g. During the period of probation, respondent must provide satisfactory proof of payment to the State Bar's Office of Probation of the following:
1. The attorney fees assessed against respondent by the Federal District Court in the matter of *Willhite v. Collins*, case no. 04-CV-4380 (D. Minn. 2005) or proof that respondent has entered into and is in compliance with a payment plan for payment of such attorney fees as ordered by the Minnesota Supreme Court in case no. A07-2418, filed January 18, 2008; and
 2. All restitution owed to Ivy Hei and the California State Bar's Client Security Fund, as a probation condition ordered in Supreme Court order S147609 (State Bar Court case no. 99-O-12923), filed January 24, 2007.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof of such is or has been shown to the Office of Probation.

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period.

At the expiration of the period of probation, if David M. Van Sickle has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is also recommended that David M. Van Sickle take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation in Los Angeles, within one year after the effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 5.162.)

Ethics and Client Trust Accounting Schools

It is also not recommended that respondent be ordered to complete Ethics School or Client Trust Accounting School as he provided to the court proof of completion of both during his period of participation in the ADP.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Direction Re Decision and Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388 of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court,

and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: October 11, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court